(16,205.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

No. 139.

EDWIN H. McHENRY AND FRANK G. BIGELOW, AS RECEIVERS OF THE PROPERTY OF THE NORTHERN PACIFIC RAILROAD COMPANY, APPELLANTS,

vs.

LORE ALFORD, J. C. GATES, A. D. STEPHENS, SUMNER R. CLARKE, AND D. C. LAKE.

ON A CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JULY 19, 1897.

United States Circuit Court of Appeals, Eighth Circuit, December Term, A. D. 1895.

WIN H. McHENRY and FRANK G. Bigelow, as Receivers of the Property of the Northern Pacific Railroad Company, Appellants, *vs.* RE ALFORD, J. C. GATES, A. D. Stephens, Sumner R. Clarke, and D. C. Lake, Appellees.	No. 748. Appeal from the Circuit Court of the United States for the District of North Dakota.

The United States circuit court of appeals for the eighth circuit, ting at the city of St. Louis, Missouri, on this 17th day of February, D. 1896, hereby certifies that upon the record on file in said court the above-entitled case, wherein Edwin H. McHenry and Frank Bigelow are appellants and Lore Alford, J. C. Gates, A. D. ephens, Sumner R. Clarke, and D. C. Lake are appellees, which se is now pending before this court upon an appeal duly taken om a decree rendered by the United States circuit court for the strict of North Dakota, dismissing the complainants' bill of com- aint, the following facts appear, to wit:

That on March 22, 1894, Thomas F. Oakes, Henry C. Payne, and enry C. Rouse, as receivers of the Northern Pacific Railroad Com- ny (in whose place and stead since the final hearing of the case dwin H. McHenry and Frank G. Bigelow have been substituted complainants), filed a bill of complaint against J. A. Rickert, unty treasurer of Richland county, North Dakota; Charles J. de, county auditor of Richland county, North Dakota; The ounty of Richland, North Dakota; D. C. Lake, S. H. Snyder, A. D. ephens, Sumner R. Clarke, S. B. Zeigler, Wm. Butt, C. A. Dole, ndrew Walker, D. E. Lake, R. A. Darling, W. A. White, L. R. reeman, N. Arntson, H. C. Sutherland, E. J. Dickey, Security rust Company, a corporation; Ingvald Reine, Wm. Britt, E. B. nes, H. D. Stephens, Henry Jones, A. Ankefeldt, —— Blaiden, hose first name is unknown; Lore Alford, and Charles H. Meyer, the district court of the fourth judicial district of North Dakota, sitting for the county of Richland, in said State. Said original bill contained no allegations showing the residence or citizenship of any of the above-named complainants or fendants. It contained in substance the same allegations which e hereafter set out in full in the amended bill subsequently filed, d prayed for substantially the same relief which is prayed for in id amended bill.

That thereafter, on September 5, 1894, Sumner R. Clarke, one of e defendants named in said original bill of complaint, appeared r the first time in said district court, fourth judicial district of the ate of North Dakota, sitting for the county of Richland, and filed e following petition, duly verified, accompanied by a good and fficient removal bond, praying for the removal of said cause to

the circuit court of the United States for the district of North Dakota; whereupon, on said 5th day of September, 1894, said district court granted said petition and made an order for the removal of said cause as therein prayed for.

Said petition for removal of said cause to the circuit court of the United States for the district of North Dakota was in the words and figures following, to wit:

"In the District Court of the United States for the Fourth Judicial District.

STATE OF NORTH DAKOTA, *County of Richland,* } ss:

THOMAS F. OAKES, HENRY C. PAYNE, and HENRY C. ROUSE, as Receivers of the Property of the Northern Pacific Railroad Company, Plaintiffs,

against

J. A. RICKERT, County Treasurer of Richland County, North Dakota; Chas. J. Bade, County Auditor Richland County, North Dakota; The County of Richland, North Dakota; D. C. Lake, S. H. Snyder, A. D. Stephens, Sumner R. Clarke, S. B. Zeigler, Wm. Butt, C. A. Dole, Andrew Walker, D. E. Lake, R. A. Darling, W. A. White, L. R. Freeman, N. Arntson, H. C. Sutherland, E. J. Dickey, Security Trust Company, a Corporation; Ingvald Reine, Wm. Britt, E. B. Ames, H. D. Stephens, Henry Jones, A. Ankefeldt, —— Blaiden, Whose First Name is Unknown; Lore Alford, Chas. H. Meyer, Defendants.

3 "To the honorable the district court of North Dakota held in and for the county of Richland:

"Your petitioner respectfully shows to this honorable court that the matter and amount in dispute in the above-entitled suit exceeds, exclusive of interest and costs, the sum or value of two thousand dollars.

"That there is in said suit a controversy which is wholly between citizens of different States and which can be fully determined as between them, to wit, a controversy between said plaintiffs as receivers of the property of the Northern Pacific Railroad Company, on the one hand, of whom the said Thomas F. Oakes was at the time of the bringing of this suit and still is a resident and citizen of the State of New York, and of whom said Henry C. Payne was at the time of bringing this suit and still is a resident and citizen of the State of Wisconsin, and of whom said Henry C. Rouse was at the time of bringing this suit and still is a resident of the State of Ohio, as your petitioner avers, none of said plaintiffs being at the time of the bringing of this suit or at any time since a resident or a citizen of the State of Illinois or of the State of North Dakota, and on the other hand your petitioner and J. A. Rickert and Chas. J. Bade and the county of Richland, of whom your petitioner was at the time of the bringing of this suit and still is a resident and

citizen of the State of Illinois, and said Rickert, Bade, and said county were at the time of the bringing of this suit and still are residents of and citizens of the State of North Dakota; that said plaintiffs, on the one hand, and your petitioner, on the other, are actually interested in said controversy; that said Rickert, Bade, and said county are formal and proper parties to said controversy, but, as your petitioner avers, without any actual interest therein.

"Said controversy — of the following nature: Your petitioner in November, 1889, bought at the sale of lands in said Richland county for delinquent taxes of the year 1888 certain of the lands described in the Schedule A annexed to the complaint in said action Your petitioner did thereupon receive certificates of his said purchase in the usual form and did thereafter pay on certain of the lands

4 so purchased the taxes levied thereon in years subsequent to the year 1888; and the said lands not being redeemed from said sale, your petitioner in December, 1891, being still the holder and owner of said certificates and said lands not being redeemed from said sale, presented said certificates to the proper officer of said Richland county and demanded and received tax deeds of the lands so bought and not redeemed, and your petitioner is still the holder and owner of said tax deeds and of all the right, title, and interest in or to said lands by said tax proceedings given or conveyed. A particular description of the lands so purchased by your petitioner and remaining unredeemed, with a statement of the amount paid at tax sales for the several parcels of such lands, is here set forth in the following schedule, where, in the first column, is shown the description of the lands, in the second column the amount so paid at said sale."

(Here follows a description of the lands referred to and amounts paid at said sale, showing amount paid to be in excess of $2,000.)

"Your petitioner further shows that in said suit and in said controversy the plaintiffs seek to set aside and utterly avoid all and singular the tax proceedings on which said certificates and tax deeds were based and issued, and this without tendering to your petitioner or offering to pay to him or to deposit in court any part of the moneys so paid out by him to purchase said lands.

"Neither in said lands hereinbefore described nor in said tax proceedings, so far as such proceedings affect said lands or any of them, are any of the parties to said suit in any manner interested save the plaintiffs, on the one hand, and your petitioner and said Rickert and Bade and said county of Richland, on the other, the —— Rickert and Bade being officers of said county whom the plaintiffs seek in said suit to have commanded and required to cancel on their official records said tax proceedings, the said county of Richland having no interest in said controversy save as it may hereafter be compelled to pay and refund to your petitioner the moneys so paid out by your petitioner in case the plaintiffs in this suit obtain the relief prayed for. The said Rickert and Bade have not nor has either of them any interest in any of said lands or in said tax proceedings.

5 "The total amount paid by your petitioner for the purchase of the lands hereinbefore described at said tax sale exceeds twenty-five hundred dollars, and the total amount of the taxes for the year 1888 levied on the same lands exceeds two thousand dollars.

"Your petitioner has prepared separate answer and defense to the complaint of the plaintiffs in said suit, and resists and defends against said plaintiffs' demand to have said tax proceedings set aside and annulled, and on the contrary your petitioner claims an interest in said lands and a lien thereon for the moneys so paid by your petitioner at said sale and for subsequent taxes, and your petitioner further claims and asserts title to said lands and ownership thereof under said tax deeds.

"The value of said lands hereinbefore described is more than five thousand dollars, and so your petitioner says that the matter and amount in dispute in said controversy, exclusive of interest and costs, exceeds the sum or value of two thousand dollars.

"And your petitioner offers herewith a good and sufficient surety for his entering in the circuit court of the United States for the district of North Dakota on the first day of its next session a copy of the record in this suit and for paying all costs that may be awarded by said circuit court if said circuit court shall hold that this suit was wrongfully or improperly removed thereto.

"And he prays this honorable court to proceed no further herein except to make the order of removal required by law and to accept the said surety and bond and cause the record herein to be removed into said circuit court of the United States for the district of North Dakota, and he will ever pray.

"SUMNER R. CLARKE.
"EDGAR W. CAMP,
"*Solicitor for Sumner R. Clarke, Jamestown, N. D.*

"Filed Sept. 5th, 1894.

"JOHN SHIPPAM, *Clerk.*"

Thereafter, on July 1, 1895, the complainants first above named filed an amended bill of complaint against the following-named defendants, now appellees, to wit, Lore Alford, J. C. Gates, A. D. Stephens, Sumner R. Clarke, and D. C. Lake, without dis-
6 missing their bill as against the other defendants to the original bill heretofore named; which said amended bill of complaint was in words and figures following, to wit:

"Thomas F. Oakes, Henry C. Payne, and Henry C. Rouse, as receivers of the Northern Pacific railway, a corporation created, organized, and existing under an act of Congress approved July 2, 1864, entitled 'An act granting lands to aid in the construction of a railroad and telegraph line from Lake Superior to Puget sound, on the Pacific coast, by the northern route,' by leave of court first had and obtained, bring this their amended bill of complaint against Lore Alford, J. C. Gates, A. D. Stephens, Sumner R. Clarke, and D. C. Lake.

"And thereupon your orators complain and say:

"I. That said Northern Pacific Railroad Company is a corporation created, organized, and existing under and by virtue of an act of Congress approved July 2, 1864, entitled 'An act granting lands to aid in the construction of a railroad and telegraph line from Lake Superior to Puget sound, on the Pacific coast, by the northern route,' and the acts and joint resolutions of Congress supplemental thereto and amendatory thereof.

"That by the terms and provisions of said act said corporation was authorized and empowered to lay out, locate, construct, furnish, maintain, and enjoy a continuous railroad and telegraph line, with the appurtenances, beginning at a point on Lake Superior in the State of Minnesota or Wisconsin, thence westerly by the most eligible railroad route as shall be determined by said company within the territory of the United States on a line north of the 45th degree of latitude to some point on Puget sound, with a branch via the valley of the Columbia river to a point at or near Portland, in the State of Oregon.

"By the third section of said act lands were granted to said railroad company as follows:

"That there be, and hereby is, granted to the Northern Pacific Railroad Company, its successors and assigns, for the purpose of aiding in the construction of said railroad and telegraph line to the Pacific coast, * * * every alternate section of public land,
not mineral, designated by odd numbers, to the amount of
7 twenty alternate sections per mile on each side of said rail-
road line, as said company may adopt, through the Territories of the United States, and ten alternate sections of land per mile on each side of said railroad whenever it passes through any State, and whenever on the line thereof, the United States have full title not reserved, sold, granted or otherwise appropriated, and free from pre-emption or other claims or rights at the time the line of said road is definitely fixed, and a plat thereof filed in the office of the Commissioner of the General Land Office; and whenever, prior to said time, any of said sections or parts of sections shall have been granted, sold, reserved, occupied by homestead settlers, or pre-empted or otherwise disposed of, other lands shall be selected by said company in lieu thereof, under the direction of the Secretary of the Interior, in alternate sections and designated by odd numbers, not more than ten miles beyond the limits of said alternate sections.' * * *

"'Provided, further, that all mineral lands be, and the same are hereby, excluded from the operations of this act, and in lieu thereof a like quantity of unoccupied and unappropriated agricultural lands, in odd-numbered sections, nearest to the line of said road, may be selected as above provided; and provided further, that the word "mineral," when it occurs in this act, shall not be held to include iron or coal.' By section 4 of said act it was further provided that whenever said company should have twenty-five consecutive miles of any portion of said railroad and telegraph line ready for the service contemplated the President of the United States should ap-

point three commissioners to examine the same, and if it should appear that such twenty-five consecutive miles of said road and telegraph line had been completed in a good, substantial, and workmanlike manner, as in all other respects required by said act, the commissioners should so report to the President of the United States, and patents of lands, as aforesaid, should be issued to said company confirming to said company all right and title to said lands situated opposite to and coterminous with said completed section of said road, and that whenever from time to time twenty-five additional consecutive miles should have been constructed,
8 completed, and in readiness, as aforesaid, and verified by said commissioners to the President of the United States, then patents should be issued to said company conveying the additional sections of land as aforesaid, and so on as fast as every twenty-five miles of said road should be so completed.

"II. That the said railroad company duly accepted the terms, conditions, and impositions of said act, and signified such acceptance in writing, under the corporate seal of said company, duly executed pursuant to the direction of its board of directors first had and obtained, and within two years after the passage of said act, to wit, December 29, 1864, served such acceptance on the President of the United States.

"III. And your orators further aver that prior to the year 1888 said railroad company definitely fixed the line of its said railroad extending from the waters of Lake Superior to a point on Puget sound, and prior to said year constructed and caused to be constructed and put into operation a continuous line of railroad and telegraph extending from the waters of Lake Superior westerly across the State of Minnesota and the Territories of Dakota, Montana, Idaho, and Washington to the waters of Pugest sound; that as fast as portions of said railroad and telegraph line equal to or exceeding twenty-five miles in length were so constructed as aforesaid they were examined by commissioners appointed by the President of the United States, and by said commissioners were found and reported to have been constructed in a good, substantial, and workmanlike manner in all respects as required by said act of Congress; that such reports were duly accepted and approved by the President of the United States, as provided in said act of Congress of July 2, 1864.

"That the portion of said railroad line extending from the Red River of the North to the Missouri river in the Territory of Dakota was definitely fixed prior to May 26, 1873, and that on that day a plat thereof, duly approved by the Secretary of the Interior, was filed in the office of the Commissioner of the General Land Office; that the lands described in Schedules 'A' and 'B,' hereunto annexed, which said schedules are here referred to and hereby made a part of this complaint, are coterminous with said portions of said railroad line and within forty miles thereof.

9 "That at the date of said grant to said railroad company and at the time the line of said railroad coterminous with the lands described in Schedules 'A' and 'B,' hereunto annexed, was

definitely fixed and the plat thereof filed in the office of the Commissioner of the General Land Office, as aforesaid, said lands were not reserved, sold, granted, or otherwise appropriated, and there were at said times no filings or entries or application to make filings or entry of any nature whatsoever upon or for said lands or any part thereof in the United States district land office for the district in which said lands were situate nor in the office of the Commissioner of the General Land Office, and no pre-emption or other claims or rights appeared on the records of said offices as having attached to said lands or any thereof; that said lands and all thereof were prior to the attempted assessments and tax levies hereinafter referred to surveyed by the United States or under its authority and were reported by the surveyors making such surveys to be agricultural lands and non-mineral in character.

"That after the construction and approval of said railroad and telegraph line, as aforesaid, and long prior to said attempted assessments and tax levies said railroad company prepared, in the form prescribed by the Secretary of the Interior, and filed with the register and receiver of the United States district land office for the district in which such lands were situate lists of lands claimed by said company as inuring to it under its said grant by virtue of the construction and approval of said portions of said railroad, including, among others, the lands described in said Schedules 'A' and 'B,' hereunto annexed, and at said times paid to the register and receiver of the United States district land office the fees to which they were by reason of such listing and filing entitled; that said lists were duly filed by said United States district land officers, and were thereupon, in accordance with the rules of practice of the Interior Department, transmitted to the office of the Commissioner of the General Land Office, to be held until said lands should be examined and it would be ascertained and determined whether they were mineral or non-mineral lands and were free from pre-emption or other claims or rights at the time the line of said railroad opposite was definitely fixed and the plat thereof filed in the office of the Commissioner of the General Land Office and until all claims thereto adverse to said railroad company's claim should be investigated and all contests decided.

"That thereupon the United States, as your orators are informed and believe, by its officers and agents in the Interior Department and in the General Land Office, began and have since proceeded with the examination of said lands and the adjustment of said grant as far as it affected said lands and to ascertain and determine whether said lands or any thereof were or are mineral in character or are for any reason excluded from the grant to said railroad company made by the act of Congress approved July 2, 1864, and the supplementary acts and joint resolutions, and to hear contests arising upon claims to said lands asserted adversely to the claim of said Northern Pacific Railroad Company; that such examination and adjustment is not yet completed, so far as it affects the lands described in Schedule 'A,' hereunto annexed, and said officers have not yet determined the character of said lands as to whether the

same are mineral or non-mineral and have not yet ascertained and determined whether the same were free from pre-emption or other claims or rights at the date of the said grant and at the time the line of said railroad was definitely located opposite said land and the plat thereof filed in the office of the Commissioner of the General Land Office or whether said lands were for any reason excluded from said grant or were granted to said railroad company; that such examination and adjustment was, long after the tax levies, proceedings, and sales hereinafter set forth, to wit, in the years 1892 and subsequent thereto, completed, so far as it affected the land described in Schedule 'B,' hereunto annexed, and it was ascertained and determined that said lands were at the date of the grant to said Northern Pacific Company and at the time the line of said railroad coterminous therewith was definitely fixed and the plat thereof filed in the office of the Commissioner of the General Land Office lands free from pre-emption or other claims or rights, and that said
11 lands were and are non-mineral in character, and the said lands were thereafter, to wit, a portion on June 24, 1892, and a portion on June 18, 1894, conveyed by the said United States to the said Northern Pacific Railroad Company by its certain letters patent duly issued under the great seal of the United States.

"But your orators further show and aver that after the said lists hereinbefore referred to were filed and transmitted to the office of the Commissioner of the General Land Office, as hereinbefore set forth, and prior to the attempted tax levies and proceedings hereinafter set out a claim to the lands described in Schedules 'A' and 'B' and each and every part thereof adverse to the claim of said railroad company was set up by the United States, and the claim of said railroad company thereto was questioned, denied, and contested; that said contest was pending at the time of said attempted assessments and tax levies hereinafter described, and, as to the lands described in Schedule 'A,' is still pending.

"That such controversy and contest was and is over questions of fact; that at the time of said attempted assessments and tax levies said lands described in Schedules 'A' and 'B' had not been and, except as to the lands described in Schedule 'B,' are not now certified or patented to said railroad company, and the said lands were not ascertained or determined to be a part of the lands granted to said company, nor were they nor are they, except as to the lands described in Schedule 'B,' segregated from the public lands of the United States; that at the time of the assessments and tax levies the United States had and asserted as to all the lands described in the said schedule hereunto annexed, and, except for the lands described in Schedule 'B,' still has and asserts a potential claim thereto because of the non-identification thereof as a part of the lands granted to said railroad company; that the United States Supreme Court has held and decided that until the patents are issued therefor the lands within odd-numbered sections within the limits of the Northern Pacific grant are 'lands belonging to the United States,' free and open to exploration for mineral deposits within the pro-

visions of chapter six, title thirty-two, of the Revised Statutes
12 of the United States, and the appropriation under said chapter upon the discovery of valuable mineral deposits therein.

"And your orators further believe and aver that some portions of the lands described in Schedule 'A,' hereunto annexed, will, when the same shall have been examined by the officers of the Interior Department and the adjustment of said grant, as far as it relates to said land, shall have been completed, be held and determined to be mineral land or to have been land not free from pre-emption or other claims or rights at the date of the grant or at the time the line of said railroad coterminous therewith was definitely fixed and the plat thereof filed in the office of the Commissioner of the General Land Office and so excluded from the grant to said Northern Pacific Railroad Company, while others of said lands will be held and determined to be agricultural lands, free from pre-emption or other claims or rights at the dates of the grant and definite location, and to be within the grant to said company; but your orators do not know and cannot ascertain and are unable to show unto your honors, upon information, belief, or otherwise, what particular tracts or parcels of land will be held and determined to be mineral land or to have not been free from pre-emption or other claims or rights at the time the line of said road coterminous therewith was definitely fixed and the plat thereof filed in the office of the Commissioner of the General Land Office and at the date of the grant or what particular lands will be finally held and determined to have passed to said railroad company under said grant.

"That because said lands described in Schedules 'A' and 'B' were at the time of said attempted assessments and tax levies not defined or identified or susceptible of identification as a part of the lands granted to said railroad company and were not segregated from the public lands of the United States, and because said lands described in Schedule 'A' are not now so identified and defined and segregated or susceptible of identification, definition, and segregation, and because of the existence of the claims by the United States to said lands described in Schedule 'A' and 'B' adverse to the claim of said railroad company in and to said lands, as hereinbefore set forth, and because of the existence of the contests
13 thereover pending in the Interior Department, and because said land grant was not at the time of said attempted assessments and tax levies adjusted as far as it related to said lands and is not now, so far as it relates to the lands described in Schedule 'A,' said lands were not nor was any portion thereof subject to assessment or taxation for or during the year 1888.

"IV. And your orators further show that the delay in identifying and segregating from the public lands of the United States the lands granted by said act of July 2, 1864, to said railroad company and in certifying and patenting to said company the granted lands is not, as your orators are informed and believe, the result of any action, failure, or neglect or default on the part of said company or of your orators as the receivers thereof; that the said railroad company and your orators, as the receivers thereof, as heretofore de-

scribed, have diligently and at all times endeavored to obtain the identification of and to secure patents for said lands, and have done everything in their means and power to obtain such identification, segregation, and issuance of patents, but such delay was and is solely because of the adverse claims to said lands, as hereinbefore stated, and that the United States might and may have sufficient opportunity to examine and cause to be examined said lands so that it may determine their mineral or non-mineral character and whether they were free from pre-emption or other claims or rights at the time of said grant and at the time the line of said railroad coterminous therewith was definitely fixed and the plat thereof filed in the office of the Commissioner of the General Land Office, and thus segregate from the public lands of the United States those lands which inure to said railroad company under said grant, and that the United States might thus be enabled to collect the cost of surveying and conveying those lands which so inured under said grant and to issue patents therefor to said company.

"V. And your orators further show that the Farmers' Loan and Trust Company is a corporation created, organized, and existing under the laws of New York and is a citizen and resident thereof.

14 "VI. And your orators further aver that a joint resolution of Congress approved May 31, 1870, entitled 'A resolution authorizing the Northern Pacific Railroad Company to issue bonds for the construction of its road and to secure the same by mortgage, and other purposes,' authorized the said railroad company to issue its bonds to aid in the construction and equipment of its road and to secure the same by mortgages on its property and rights of property of all kinds and descriptions, real, personal, and mixed, including its franchise as a corporation.

"That thereafter, to wit, November 20, 1893, the said railroad company, pursuant to the authority in said joint resolutions conferred, made, executed, and delivered its certain trust deed or mortgage, known as the general second mortgage, wherein and whereby it conveyed to said Farmers' Loan & Trust Company of New York all and singular its railroad and telegraph line or lines, then constructed and being constructed, and to be constructed, from a point on Lake Superior in the State of Wisconsin to Tacoma, on Puget sound, with the rights, privileges, immunities, and franchises connected with and relating to said lines of railroad and line or lines of telegraph and the construction, operation, maintenance, use, and enjoyment thereof and all corporate and other franchises of any nature relating thereto, including the franchise of such railroad company to be a corporation; also all the lands granted by the Congress of the United States to aid in construction and equipment of the entire of said main line and branch railroad; also all the indemnity lands, wherever the same shall be situated, that shall or may be acquired to supply deficiencies in the quantity of said granted lands in pursuance of and in accordance with the terms and provisions of said grant; that said trust deed or mortgage so made was made to secure certain bonds to be issued by said company to

an amount not exceeding twenty millions of dollars; that large amounts of said bonds were so issued, and there is now outstanding thereof $19,216,000.00.

"That thereafter, to wit., December 1, 1887, the said Northern Pacific Railroad Company made its certain other mortgage, known as the general third mortgage, by which it conveyed, by way
15 of mortgage and in trust to said Farmers' Loan & Trust Company of New York, all its railroad and telegraph lines, Cascade branch, land grant (including such indemnity lands as were then or might thereafter be acquired to supply deficiencies in the quantity of granted land), property, equipment, and franchises acquired and to be acquired for use in connection with its said railroads or its business, including its franchise to be a corporation, to secure the issue of its fifty-year six per cent. sinking fund gold bonds to an amount not to exceed in the aggregate twelve million dollars; that of said mortgage bonds there have been issued and are now outstanding bonds to the aggregate amount of $11,461,000.00; that thereafter, to wit, December 2, 1889, the Northern Pacific Railroad Company made its certain other mortgage, known as its consolidated mortgage, by which it conveyed by way of mortgage and in trust to said Farmers' Loan and Trust Company of New York all its railroad and telegraph line, Cascade branch, land grant (including such indemnity lands as were then or might thereafter be acquired to supply deficiencies in the quantity of granted lands), property, equipment, franchises acquired or thereafter to be acquired for use in connection with said railroad and its business, including its franchise to be a corporation, to secure the issue of its hundred-year five per cent. gold bonds not to exceed in the aggregate one hundred and sixty millions dollars; that of said bonds so secured there have been issued and are now outstanding bonds to the aggregate amount of $62,329,000.00.

"VII. And your orators further aver that in the year 1893 the said Northern Pacific Railroad Company was insolvent and unable to meet the interest upon its said bonds so issued and outsanding and to pay its debts, and that August 14, 1893, P. B. Winston, a bondholder of said company; The Farmers' Loan & Trust Company: William C. Sheldon, George F. Sheldon, William S. P. Prentice, and William C. Sheldon, Jr., copartners, doing business under the firm name and style of William C. Sheldon & Company, creditors of said company, filed their bill of complaint in the United States — for the District of North Dakota, wherein, among other things, they prayed that receivers might be appointed of all the property of said Northern Pacific Railroad Company; that on the same day, on application of said complainants, said defend-
16 ant, The Northern Pacific Railroad Company, thereto consenting, the said court, then and there having jurisdiction, by an order duly made, appointed your orators, said Thomas F. Oakes, Henry C. Payne, and Henry C. Rouse, the receivers of said court of all and singular the said defendant Northern Pacific Railroad Company and of the lands, railroads, assets, and property of said company within the jurisdiction of said court, and authorized and

directed said receivers to take possession of all and singular such property wherever situate or found, and to protect the title and possession of the same; and the said court, then and there, by its said order, commanded and enjoined the officers, directors, and employees of said Northern Pacific Railroad Company and all other corporations soever from interfering in any way with the possession and management of any part of the property over which the receivers were appointed or interfering in any way with the discharge of their duties as such receivers.

"That thereafter, the said railroad company having made default in the payment of the interest upon its said bonds secured by the mortgages hereinbefore referred to, and having made default in the terms and conditions of said mortgages, the said Farmers' Loan & Trust Company, on the 25th day of October, 1893, commenced in said United States circuit court for the district of North Dakota, by duly filing its bill of complaint therein and causing a subpœna to be issued and served upon the defendants, an action against the said Northern Pacific Railroad Company, Philip B. Winston, and William C. Sheldon; G. R. Sheldon, William S. B. Prentice, and William C. Sheldon, Jr., copartners, doing business under the firm name and style of William C. Sheldon & Company, and Thomas F. Oakes, Henry C. Payne, and Henry C. Rouse, as receivers for the Northern Pacific Railroad Company, for the foreclosure of said described mortgages; that by an order duly made and entered by said court on said day said action was consolidated with said prior action, and your orators, the said Thomas F. Oakes, Henry C. Payne, and Henry C. Rouse, were appointed receivers of the Northern Pacific Railroad Company and of the property of said company, as in said order appointing them, made in the court August 14, 1893, with the right, powers, and privileges in said order set forth, and their said receivership was extended to the said consolidated cause and since
17 continues; that after their appointment as such receivers, both in said original creditor's suit and in said foreclosure suit, your orators duly qualified and filed their bonds as required by the order of the court; that said receivers are fully authorized and empowered to institute and prosecute all such suits, actions, and proceedings as may in their judgment be necessary to protect the property vested in them and committed to their charge as such receivers.

"That at the time of the appointment of your orators as such receivers said Northern Pacific Railroad Company claimed and had an interest under the said act of Congress approved July 2, 1864, and its acts taken in accordance therewith, as hereinbefore set forth, in and to the lands described in schedule 'A' and 'B' hereunto annexed, which said interest was subject to the liens of the mortgages hereinbefore referred to; that your orators, under the orders and directions of said court, proceeded to take into their custody as such receivers all of the said described lands, and have since so retained the same; that thereafter, to wit, November 27, 1893, your orators were by said court authorized and directed to proceed with the adjustment of the land grant to said railroad com-

pany, and to do any and all things by them deemed necessary to that end.

"And your orators show that they have, since their appointment as aforesaid, endeavored, and are endeavoring, and taking all steps necessary to that end, to obtain the adjustment of said land grant to said company, and to obtain a final determination by the United States as to what lands claimed by your orators as inuring to said railroad company under the terms of said act do in fact so inure; and to have the granted lands defined and identified and segregated from the public lands of the United States; and to have the patents therefor issued by the United States to said railroad company; that as yet your orators have not been able to obtain patents for those lands described in schedule 'A' hereto annexed, which pass under said grants, because there is, as your orators are informed and believe, an adverse claim existing thereto, and because the United States have not yet examined said lands or
18 any thereof, or ascertained or determined whether or not said lands inure to said company under the terms of said act of July 2, 1864.

"VIII. And your orators further show that the lands described in said schedules 'A' and 'B' are in the county of Richland and State of North Dakota.

"That by an act approved March 9, 1883, entitled 'An act to provide for the levy and collection of taxes upon the railroad property of railroad companies in this Territory,' the legislature of the Territory of Dakota, provided among other things as follows, to wit:

'In lieu of any and all other takes upon any railroads except railroads operated by horse power, within this Territory or upon the equipment, appurtenances or appendages thereof, or upon any other property situated in this Territory belonging to the corporation owning or operating such railroads or upon the capital stock or business transaction of such railroad company, there shall hereafter be paid into the treasury of this Territory a percentage of all the gross earnings of the corporation owning or operating such railroad, arising from the operation of such railroad as shall be situated within this Territory, as hereinafter stated, that is to say:

'Every such railroad corporation or person operating a railroad in this Territory shall pay to said treasurer each year for the first five years after said railroad shall be or shall have been operated in whole or in part, two (2) per centum of such gross earnings; and for and in each and every year after the expiration of the said five years, three (3) per centum of the said gross earnings; and the payment of such per centum annually as aforesaid, shall be and is in full of all taxation and assessments whatsoever, upon the property aforesaid. The said payments shall be made one-half ($\frac{1}{2}$) on or before the fifteenth day of February and one-half ($\frac{1}{2}$) on or before the fifteenth day of August in each year, and for the purpose of ascertaining the gross earnings aforesaid, an accurate account of such gross earnings shall be kept by said company.'

"That by an act approved March 7, 1889, entitled 'An act for the levy and collection of taxes upon property of railroad companies in

this Territory,' the legislature of said Territory, among other things, enacted and provided as follows, to wit:

"'In lieu of any and all other taxes upon any railroads except railroads operated by horse power, within this Territory, or upon the equipment, appurtenances and appendages thereof, or upon any other property situated in this Territory belonging to the corporation owning or operating such railroads upon the capital stock or business transactions of said railroad company there shall hereafter be paid into the treasury of this Territory an amount equal to a percentage of all the gross earnings of the corporation owning or operating such railroad, arising from the operating of such railroad, as shall be situated within this Territory, both upon territorial and interstate traffic, in case the railroad company owning or operating such line shall accept and become subject to this act as hereinafter provided.

"'Every such railroad corporation or person owning or operating or that may hereinafter own or operate any line of railroad in this Territory which shall have accepted this act, shall pay to said treasurer each year "for the first five years" after the approval of this act an amount equal to three per centum of such gross earnings,
"and for and in each and every year after the expiration
19 of such five years an amount equal to two per centum of said gross earnings," and the payment of such amount annually as aforesaid shall be and in full of any and all other taxation and assessment whatever upon the property aforesaid.

"'7. Any railroad company which at the date of the passage of this act owns or is engaged in operating any line or lines of railroad in this Territory, may at any time within thirty days after the passage of this act, by resolution of its board of directors, attested by its secretary, and filed with the secretary of the Territory, accept and become subject to the provisions of this act, and provided that any railroad company which is now in arrears in the payment of taxes assessed under chapter 99, of the laws of 1883, shall within thirty days after the passage of this act pay into the territorial treasury the full amount of the taxes and interest due under the assessments under the said laws of 1883, before they can avail themselves of the provisions of this act, by accepting its terms, including taxes on both territorial and interstate earnings. It is further expressly provided that any company failing to strictly comply with the provisions of this act within the term herein provided shall be immediately subject to assessment and taxation in the manner provided for the assessment and taxation of the property of individuals of this Territory and said taxes shall be collected in the same manner provided for the assessment and taxation of the property of individuals of this Territory and said taxes shall be collected in the same manner as is now provided in cases of the property of individuals. Any company which has not complied with the provisions of chapter 99 of the session laws of 1883, by paying all taxes claimed on gross earnings both territorial and interstate or by filing account of the gross earnings both territorial and interstate, shall prepare and file such account in the manner therein provided

within thirty days from the passage hereof, and pay one-half of the entire amount due under the agreement and acceptance herein referred to, for the current year, and also the entire amount of taxes heretofore claimed by the Territory on local and interstate earnings of such companies, but remaining unpaid at the time of filing said account and within thirty days after the passage of this act or the same shall not apply to said company or companies. The balance of said taxes due for the current year shall be paid to the territorial treasury on or before the 15th day of August, 1889.'

"That the said Northern Pacific Railroad Company, prior to and during the years 1886, 1887, 1888, and 1889, operated by steam power a railroad in said Territory, and did within thirty days after the passage of said act of March 7, 1889, by resolution of its board of directors, attested by its secretary and filed with the secretary of the Territory of Dakota, accept and become subject to the provisions of said act as aforesaid, and within thirty days after the passage of the same prepared and filed with the treasurer of the said Territory in the manner required by chapter 99, of the session laws of the Territory of Dakota for the year 1883, an account of the gross earnings of said railroad company, both local and interstate, for the years 1886, 1887, and 1888, and paid into the treasury of said Territory the entire amount of taxes and interest theretofore claimed by said Territory as due from said company on local and interstate earnings but remaining unpaid at the time of filing said account, such payments being as follows, to wit: for the latter half of
20 the year 1886, $38,095.31; for the year 1887, $65,585.46; said payment for the latter half of the year 1886 being one-half of the percentage computed in accordance with the provisions of said act of 1883 upon the gross earnings of said company, both local and interstate, for said year; said payment for the year 1887 being the percentage computed in accordance with said act upon the gross earnings of said company for said year derived from interstate business, the percentage for said year computed upon the gross earnings of said company derived from intrastate business having been theretofore paid by said company as required by said act; and said company further paid into said treasury at said time, in accordance with the provisions of said act of 1883, the further sum of $46,937.09, being one-half of the entire amount claimed by said Territory as due from said company as percentages computed upon its gross earnings, both intrastate and interstate, for the year 1888, in accordance with the provisions of said act of 1883; and, further, on or about August 15, 1889, said company paid into said treasury the further sum of $46,937.09, being the remaining one-half of the sum claimed as taxes by said Territory to be due as aforesaid for said year 1888 as aforesaid.

"IX. And your orators further show that prior to and during the year 1888 the following-named railroad companies operated railroads by steam power in said Territory of Dakota, and owned and so operated the following number of miles of railroad within said Territory, respectively, to wit:

	No. of miles.
St. Paul, Minneapolis & Manitoba Railway Co.	1,187
Chicago, St. Paul, Minneapolis & Omaha R'y Co.	88
Burlington, Cedar Rapids & Northern R. R. Co.	82
Minneapolis, St. Paul & Sault Ste. Marie R. R. Co.	99
Wisconsin, Minnesota & Pacific R. R. Co.	39
Black Hills & Fort Pierre R. R. Co.	15
Cherokee & Dakota R. R. Co.	15
Chicago, Milwaukee & St. Paul R. R. Co.	1,215
Chicago & Northwestern R. R. Co.	757
Fremont, Elkhorn & Missouri Valley R. R. Co.	122
Northern Pacific Railroad Company	378
James River Valley R. R. Co.	64
Northern Pacific, LaMoure & Mo. River R. R. Co.	21
Jamestown & Northern R. R. Co.	102
Northern Pacific, Fergus & Black Hills R. R. Co.	42
Sanborn, Cooperstown & Turtle Mountain R. R. Co.	36
Southeastern Dakota R. R. Co.	9
Fargo & Southwestern R. R. Co.	87
Duluth & Manitoba Railroad Company	96

21 "That during all of said period said railroad companies owned property within said territory subject to taxation therein, consisting of said mileage and railroad equipments, appendages, and appurtenances, to overthe amount respectively of the sum set opposite the names of said companies, to wit:

St. Paul, Minneapolis & Manitoba R. R. Co.	$3,461,000
Chicago, St. Paul, Minneapolis & Omaha R. R. Co.	264,000
Burlington, Cedar Rapids & Northern R. R. Co.	246,000
Minneapolis, St. Paul & Sault Ste. Marie R. R. Co.	297,000
Wisconsin, Minnesota & Pacific R. R. Co.	117,000
Black Hills & Fort Pierre R. R. Co.	45,000
Cherokee & Dakota R. R. Co.	45,000
Chicago, Milwaukee & St. Paul R. R. Co	3,645,000
Chicago & Northwestern R. R. Co.	2,271,000
Fremont, Elkhorn & Missouri Valley R. R. Co.	366,000
Northern Pacific Railroad Company	1,134,000
James River Valley R. R. Co.	192,000
Northern Pacific, La Moure & Mo. River R. R. Co.	63,000
Jamestown & Northern R. R. Co.	306,000
Northern Pacific, Fergus & Black Hills R. R. Co.	126,000
Sanborn, Cooperstown & Turtle Mountains R. R. Co.	108,000
Southeastern Dakota R. R. Co.	27,000
Fargo & Southwestern R. R. Co.	261,000
Duluth & Manitoba R. R. Co.	288,000

"That the county assessors for the various counties within which the said property was situated knowingly and wilfully omitted from their assessment-rolls for the year 1888 all such portions of said property as lay within their respective counties and failed to

assess the same for the purpose of taxation, and no territorial, county, town, or other tax was levied upon said property or any of it for or during the year 1888, and that by reason of the omission to so assess said property and to levy taxes on the same the amount of the taxes levied by said county of Richland on said lands described in the said Schedules 'A' and 'B' for the year 1888 was greatly increased, and that said increase of taxes upon these lands resulting from such omission cannot be segregated from the taxes which might otherwise be due from said lands if the same were taxable; that during all of said year 1888 certain portions of said property of a value exceeding the following amounts, to wit, $153,000 owned and controlled by said Chicago, Milwaukee & St. Paul Railroad Company, $222,000 owned and controlled by said St. Paul, Minneapolis & Manitoba Railway Company, $102,000 owned and controlled by said Minneapolis, St. Paul & Sault Ste. Marie Railroad Company, were within said county of
22 Richland; that during said year all of said railroads hereinbefore named were engaged in interstate commerce and engaged in the business of carrying freight and passengers between the said Territory of Dakota and other Territories and States.

"X. And your orators further show that, notwithstanding the premises, in the year 1888 the county and township assessors of said county of Richland prepared a certain pretended assessment-roll of property in said Richland county, and on or before the first Monday in July, 1888, delivered the same to the county clerk of said county.

"That — September 3, 1888, the board of county commissioners of said Richland county met at the county-seat of said county and made the following tax levy, to wit:

"County general fund, two mills on the dollar; county road and bridge fund, five-tenths mills on the dollar; county sinking fund, one mill on the dollar.

"That on said day the county auditor of said Richland county levied two mills on the dollar for general school fund, and reported the tax as levied by the Territory of Dakota as follows:

"For general purposes, three and one-tenth mills on the dollar; for stock indemnity fund, four-tenth- mills on the dollar.

"That thereafter the county clerk of said county made out a certain pretended tax-list, purporting to describe the taxable property in said county, and, having prepared a duplicate thereof, delivered such duplicate to the county treasurer of said county; that thereafter, the said pretended tax remaining unpaid, the said treasurer, on the fourth day of November, 1889, attempted and pretended to sell to the following persons the following-described parcels and tracts of land, viz:"

(Here follows a list of lands described by section, township, and range which were sold to the defendants A. D. Stephens, Sumner R. Clarke, D. C. Lake and to one S. H. Snyder, all of said lands so described being a portion of the lands also described in Exhibits "A" and "B," referred to and annexed to the bill of complaint.)

23 "And your orators further show upon their information and belief that after such pretended sales said county treasurer executed and delivered to each of said purchasers certificates in writing describing the lands so pretended and attempted to have been sold.

"And your orators further show unto your honors that they believe that said certificates were in the form prescribed by section 67 of chapter 28 of the Political Code of 1877 of Dakota Territory, but they have been and are unable to obtain a copy thereof or to examine the same and are unable to show unto your honors with respect thereto except as hereinbefore set forth.

"And your orators further show upon their information and belief that thereafter said S. A. Snyder duly assigned and transferred to said Lore Alford and J. C. Gates, defendants herein, such certificates of sale.

"And your orators further show upon information and belief that thereafter, there having been no redemption from said sales, the persons hereinafter mentioned, defendants herein named, presented to the treasurer of said county such certificates of purchase of certain of said lands and demanded deeds therefor; that thereupon said treasurer executed to said persons, in the name of the Territory of Dakota, deeds purporting to convey said lands to said persons; that there *was* so executed and delivered to the following-names persons respectively such deeds for the lands herein described immediately following the names of such persons, viz:"

(Here follows list of lands conveyed and persons to whom conveyed.)

* * * * * * *

"That said deeds have not been recorded in the office of the register of deeds and your orators have been and are unable to obtain copies of or to examine said deeds or any thereof and cannot show unto your honors as to the sufficiency of said deeds or of the execution thereof, but your orators believe that said deeds are in the form prescribed by the laws of North Dakota and were executed in the manner prescribed by said law; and your orators further
24 show upon information and belief that said defendants claim and pretend that said deeds were duly executed in the manner and form prescribed by the laws of the State of North Dakota and are sufficient to convey to the said defendants the title of the lands described therein.

"Your orators further show, however, that it appears from the records in the office of the county treasurer of said county that such deeds and tax certificates were executed and delivered as hereinbefore averred; that thereby great and irreparable injury is caused, and your orators show that said deeds and certificates constitute and are a cloud upon the title of the lands described therein; that the defendants herein, the grantees under said deeds, claim and assert an interest thereunder in and to the lands described in said deeds and threaten and intend to record said deeds; that said persons to whom such certificates of sale were issued and their assigns, de-

fendants herein, claim a lien upon the lands described in such certificates for the amount of the purchase price of said certificates and claim and pretend to have an interest in and to said lands under and by virtue of said tax sales.

"XI. And your orators further show that said pretended taxes levied as aforesaid on said lands described in said Schedules 'A' and 'B' and said pretended sales for said pretended taxes are illegal and void for the following reasons:

"(1.) That the several county and township assessors for said county of Richland did not, during the year 1888, make out, and did not make out and deliver to the county clerk of said county of Richland, any assessment roll or rolls prepared in substantially the form prescribed by section 1582 of the Compiled Laws of Dakota for 1887.

"(2.) The said township and county assessors did not list and assess in the year 1888 the lands described in said Schedules 'A' and 'B' or any of said lands and omitted from the township and county assessment-rolls for the said year the descriptions of said lands, and the descriptions of said lands do not appear in said roll.

"(3.) The said township and county assessors did not make out and deliver to the county clerk of said county, on or before the first Monday of July, 1888, or at all, any assessment-roll containing a list of all the taxable lands in such county in numerical order, beginning with the lowest section in the lowest-numbered township in the lowest-numbered range in said county and ending in the highest-numbered section, township, and range; that immediately following the description of lands in township 131 north of range 47 west on said assessment-roll is the description of certain lands in townships 131 and 132 north of range 52 west; that the description of the lands described in Schedules 'A' and 'B' situated in ranges 48, 49, 50, and 51 is placed in said assessment-roll after the description of a portion of the lands contained in range 52 west.

"(4.) That said lands described in said Schedules 'A' and 'B' were not assessed to said Northern Pacific Railroad Company for said year 1888, although said township and county assessors well knew that, except for the claims of the United States thereto, said Northern Pacific Railroad Company was the sole claimant thereof.

"(5.) That the assessment-roll for said county of Richland for the year 1888 does not show the number of the school and road district in which said lands described in Schedules 'A' and 'B' or any of them were situated.

"(6.) The board of county commissioners of said county of Richland did not hold a session of two days, commencing on the first Monday of July, 1888, as a board of equalization for the purpose of equalizing and correcting the assessment-roll for said county of Richland.

"(7.) That the levy for the general territorial tax for the year 1888 upon the lands described in Schedules 'A' and 'B,' hereunto annexed, was in excess of the amount authorized by law, being three and one-tenth mills on the dollar.

"(8.) That the board of county commissioners for said county of Richland in said year 1888 levied the tax for the county bridge fund and for the county road fund together in bulk and not separately, and the amount levied on said lands described in Schedules 'A' and 'B' for said year for said funds was levied in bulk and not separately.

26 "(9). That the county clerk of said county of Richland did not after the levy of said taxes, as hereinbefore set forth, make out a tax-list in substantially the form required by section 1595 of the Compiled Laws of Dakota for 1887.

"(10). No description of said lands described in Schedules 'A' and 'B' was included in the tax-list of said county of Richland for the year 1888.

"(11). The tax-list of said county of Richland for said year 1888 did not contain a list of all the taxable lands in said county (not included in town lots) in numerical order, commencing in the lowest-numbered section in the lowest-numbered township in the lowest-numbered range in said county and ending in the highest-numbered section, township, and range, but immediately following the description of certain lands in range 47 west appears the description of certain lands situated in townships 131 and 132, range 52 west; that the description of all the lands in Schedules 'A' and 'B,' hereunto annexed, which are within range- 48, 49, 50, and 51 west are after the descriptions of said lands in range 52 west in said tax-list.

"(12). Said tax-list for said county of Richland for the year 1888 failed to specify the years for which said lands described in said Schedule- 'A' and 'B' had been sold for taxes and not redeemed, although said lands had been so sold for taxes levied thereon for years prior to 1888 and had not been redeemed from such sale.

"(13). The treasurer of said county of Richland did not, prior to the attempted sale of said lands for the taxes attempted to be levied thereon for the year 1888, as hereinbefore set forth, give notice that he would sell the separate parcels of lands described in Schedules 'A' and 'B' hereunto annexed, for the taxes attempted to be levied thereon for the year 1888 or the preceding years and did not publish any other or further notice than the following, to wit:

27 "'*Delinquent Tax Sale.*

"'TERRITORY OF DAKOTA, } ss:
County of Richland, }

"'WAHPETON, *Oct. 2nd*, 1889.

"'Notice is hereby given that I shall proceed to sell at public auction, at the office of the county treasurer, at the court-house, in the city of Wahpeton, on Monday, November 4, 1889, at 9 o'clock a. m., the following-described lands and lots in the county of Richland, Territory of Dakota, or as much thereof as will pay the taxes,

with penality and interest, cost for advertising, fees for selling, for the years 1888 and 1887, unless the same are previously paid.

"'O. K. ULSAKER,

"' *Treas. Richland Co., D. T.*'

following such notice with a description of the lands advertised to be sold; that the said pretended notice did not contain the amount of taxes due or claimed to be due upon said lands.

"(14.) That the south half of the northeast quarter of section thirty-three, township 136 north, of range fifty-one west, P. M. North Dakota, were omitted from the published notice of sale for the taxes for said year 1888.

"(15.) In making said attempted sale, said county treasurer failed to offer for sale or to sell the smallest portion of each of said parcels of land that would bring the amount of the taxes, penalty, interest, or costs claimed to be due on such parcel, but offered and sold each of such parcels as an entirety.

"(16.) Said county treasurer of Richland county did not, after the attempted sale of said lands described in schedules 'A' and 'B,' hereunto annexed, file in the office of the county clerk a return of such sale, showing the lands sold or the names of the purchasers and the sums bid by them, or a copy of the notice of the sale with a certificate of the advertisement, verified by an affidavit, or any return.

"And your orators further show that said deeds so issued are void for the reason that the said county auditor of said county did not, prior to the issuance thereof, cause a notice to the persons in whose names such lands were assessed, specifying the description of such lands, the amount for which the same were sold, the amount required to redeem such lands from sale, exclusive of the cost
28 to accrue upon such notice, and the time when the redemption period would expire, to be published once in each week for three consecutive weeks in some newspaper printed and published in said Richland county, although there were, at all of said times, newspapers printed and published in said county.

"XII. And your orators further show that said defendant-, Lore Alford, J. G. Gates, A. D. Stephens, Sumner R. Clarke, and D. C. Lake, claims some interest in said lands described in said schedules 'A' and 'B,' and in certain portions thereof adverse to your orators and arising under said tax proceedings and the sales made thereunder.

"XIII. And your orators show that they hereby tender and offer to pay whatever taxes or amounts necessary to redeem said lands from sale for said pretended taxes of 1888, as may be found and determined in this action to be legally and equitably due to said defendants or any of them.

"XIV. And your orators further show upon information and belief that the said county of Richland is bankrupt; that it owes large sums of money, and that its county warrants are not worth their face value; that if your orators were to redeem any of said lands from said pretended tax sales and thereafter bring suits for amounts

so paid for such redemption and recover judgment therefor against said county, said judgment or judgments would be uncollectable, and would be paid, if at all, in said depreciated county warrants.

"XV. Your orators further show that the lands described in said schedules 'A' and 'B' are wild, vacant, and unoccupied, except where occupied by tenants of your orators, and that said lands so claimed by each of said defendants is of the value of over two thousand dollars; that the cost of redemption from the tax certificates held by each of said defendants would be over two thousand dollars respectively.

"Forasmuch as your orators can have no adequate relief except in this court, and to the end therefor that the defendants may, if they can, show why your orators should not have the relief hereby prayed, and make a full discovery and disclosure of all the matters aforesaid, and according to the best and utmost of their knowledge, remembrance, information, and belief, full, true, direct, and
29 perfect answer make to the matters hereinbefore stated and charged, but not under oath, an answer under oath being hereby expressly waived.

"May it please your honor to grant unto your orator a writ of subpœna of the United States of America directed to the said Lore Alford, J. C. Gates, A. D. Stephens, Sumner R. Clarke, and D. C. Lake, commanding them on a day certain to appear and answer unto this amended bill of complaint and to abide and perform such order and decree in the premises as to the court shall seem proper and required by the principles of equity and good conscience.

"And your orators further pray:

"First. That your honors may enter an order herein adjudging and decreeing that the lands described in said schedules 'A' and 'B,' hereunto annexed, and each and all thereof were not subject to assessment and taxation by the said county for the year 1888.

"Second. That your honors may enter an order decreeing that said pretended and attempted assessments and tax levies were and are null and void, and that all certificates and deeds issued under and by virtue of the same are illegal and void and are clouds upon the title to said described lands.

"Third. That the said defendants, Lore Alford, J. G. Gates, A. D. Stephens, Sumner R. Clarke, and D. C. Lake, be required to disclose unto your orators the extent and nature of the interest, if any, claimed by them in or to the land described in said schedules 'A' and 'B,' hereunto annexed, or of any of said land, and that they and each of them be directed and commanded to produce in the trial of this cause all tax certificates, deeds, and instruments in writing purporting to convey to them or any of them any interest in or lien upon said lands described in said schedules 'A' and 'B' or any thereof, and to disclose unto your orators in their answer herein true and correct copies of such certificates, deeds, and instruments in writing.

"Fourth. That the adverse claim of said defendants, Lore Alford, J. G. Gates, A. D. Stephens, Sumner R. Clarke, and D. C. Lake,

be determined and adjudged to be void, and that all tax cer-
30 tificates, deeds, and instruments in writing, purporting to convey to said defendants or any of them be decreed to be void, and a cloud upon the title to said land, and that said defendants be required to deliver up the same for cancellation, and that said defendants and each of them be decreed to have no estate or interest whatsoever in or to the said lands or any part thereof under and by virtue of said pretended taxes and assessments, or any certificates or deeds issued under or by virtue of the same; that said defendants and each of them, their, and each of their heirs, executors, administrators, and assigns be forever enjoined and restrained from asserting any claim whatsoever in and to the said lands and premises adverse to your orators or to said Northern Pacific Railroad Company under and by virtue of said assessments and taxes, or any sale made or certificate or deed issued under or on account of said assessment or taxes.

"Fifth. For such other and further relief in the premises as is consistent with equity and good conscience."

(Attached to said amended bill of complaint were Schedules "A" and "B," referred to therein, containing a description of the lands referred to in the bill by section, township, and range.)

Thereafter, on December 2, 1895, the above-named defendants, Lore Alford, J. C. Gates, A. D. Stephens, Sumner R. Clarke, and D. C. Lake (now appellees), filed the following joint and several demurrer and answer to the aforesaid amended bill of complaint, to wit:

"United States Circuit Court for the District of North Dakota, Southeastern Division.

"THOMAS F. OAKES, HENRY C. PAYNE, and HENRY C. ROUSE, as Receivers of the Northern Pacific Railroad Co., Plaintiffs,

vs.

LORE ALFORD, J. C. GATES, A. D. STEPHENS, SUMNER R. CLARKE, and D. C. LAKE, Defendants.

"The joint and several demurrers to part and the joint and several answer of the said defendants to the residue of the original bill of complaint of the above-named plaintiffs.

31 "These defendants, by protestation, not confessing or acknowledging all or any of the matters and things in the said bill to be true in such manner and form as the same are therein set forth and alleged, demur to so much of the plaintiffs' said bill as is contained and set forth in the first, second, third, fourth, fifth, sixth, seventh, tenth, twelfth, thirteenth, fourteenth and fifteenth paragraphs of said bill, and for cause of demurrer they show:

"That it appeareth by the plaintiffs' own showing and by the said parts of the said bill that the plaintiffs are not entitled to the discovery or relief prayed by the said bill, and that the said plaintiffs have not in and by said parts of the said bill made or stated such a case as doth or ought to entitle them to any such discovery

or relief as is thereby sought and prayed for from and against these defendants.

"Wherefore these defendants demand the judgment of this honorable court, whether they shall be compelled to make any other or further answer to the said parts of the said bill or any of the matters and things therein contained.

"And these defendants do demur to so much of the plaintiffs' said bill as is contained and set forth in the first, second, fifth, sixth, seventh, eighth, ninth, tenth, twelfth, thirteenth, fourteenth, and fifteenth paragraphs of said bill, and for cause of demurrer they show:

"That the said praintiffs have not in and by the said parts of said bill made or stated such a cause as doth or ought to entitle them to any such discovery or relief as is thereby sought and prayed for from and against these defendants.

"Wherefore these defendants demand judgment of this honorable court whether they shall be compelled to make any other or further answer to the said parts of the said bill or any of the matters and things therein contained.

"And these defendants do demur to so much of the said bill as is set forth in the first, second, third, fourth, fifth, sixth, seventh, eighth, ninth, tenth paragraphs of said bill, and to the matter set forth in the third, fourth, fifth, eighth, ninth, tenth, eleventh, twelfth,
32 thirteenth, fourteenth, fifteenth, and sixteenth subdivisions of paragraph eleven of said bill, and in paragraphs twelve, thirteen, fourteen, and fifteen of said bill, and for cause of demurrer they show:

"That the said plaintiffs have not in and by the said parts of said bill made or stated such a cause as doth or ought to entitle them to any such discovery or relief as is thereby sought and prayed for from and against these defendants.

"Wherefore these defendants demand judgment of this honorable court whether they shall be compelled to make any other or further answer to the said parts of the said bill, or any of the matters and things therein contained.

"And to the residue of the said bill—that is to say, to the discovery and relief prayed by virtue of the matters alleged in subdivisions one, two, six, and seven of said paragraph eleven, these defendants, for answer thereto, severally say:

"They admit the allegations contained in paragraphs one and two of said bill to be true; they admit the allegations contained in paragraphs five, six, and seven of said bill to be true; they admit that in the year 1888 the county township assessors of said county prepared an assessment-roll of property in said county, and on or before the first Monday in July delivered the same to the county clerk of said county.

"That September 3rd, 1888, or thereabouts, the county commissioners of said county made a tax levy substantially as set forth in said paragraph ten.

"That thereafter the county clerk of said county made out a tax-list purporting to describe the taxable property in said county and

delivered a duplicate to the county treasurer of said county, and thereafter the said taxes remaining unpaid, said treasurer, on or about the fourth day of November, 1889, sold the parcels of land to the persons named in said paragraph ten, substantially as therein set forth, and they show that one of said certificates was in the words and figures following:

"'No. 247. *County Treasurer's Certificate of Tax Sale.*

"'THE STATE OF NORTH DAKOTA, }
County of Richland. }

"'I, O. K. Ulsaker, treasurer of the county of Richland, do
33 hereby certify that the following-described real estate in said county, to wit:

West ½ section 21, township 135, range 51, 320 acres, valuation	$800 00
Taxes, $24.48; interest (penalty and costs), $5.04; total	$29 52
Certificate	50
	$30 02

was on the fourth day of November, 1889, duly sold by me in the manner provided by law for the delinquent taxes thereon for the year 1888, amounting to thirty and .02 dollars, including interest and penalty thereon and the costs allowed by law to A. D. Stephens for the sum of thirty and $\frac{2}{100}$ dollars, he being the highest and best bidder for the same; and I further certify that unless redemption is made of said real estate in the manner provided by law the said A. D. Stephens or assigns will be entitled to a deed therefor on and after the 4th day of November, A. D. 1889.

"'O. K. ULSAKER,
"'*County Treasurer,*
"'By SIDNEY E. DE LONG, *D'p'ty.*'

"That the other certificates so executed and delivered were in the same form save as to the description of the lands and amounts paid and names of the purchaser-.

"That the certificates made to said S. H. Snyder were before the beginning of said suit transferred to said Alford and said Gates.

"They admit that there was no redemption from said sales, and that said certificates were afterwards presented for deeds, and deeds were executed substantially as set forth in said bill.

"They admit that said deeds have not been recorded, and they show that one of the said deeds was in the words and figures following:

"'Whereas Lore Alford and John C. Gates did on the 12th day of February, A. D. 1892, produce to the undersigned J. A. Rickert,

treasurer of the county of Richland, in the State of North Dakota, a certificate of purchase in writing bearing the date the 4th day of November, 1889 signed by O. K. Ulsaker who at the last-mentioned date was treasurer of said county from which it appears
34 that S. H. Snyder did on the 4th day of November 1889 purchase at public auction at the door of the court-house in said county, the tract parcel, or lot of land lastly in this instrument described, and which lot was sold to S. H. Snyder for the sum of seventeen and $\frac{52}{100}$ dollars being the amount due on the following tract or lot of land returned delinquent for the non-payment of taxes, costs, and charges for the year 1888, to wit: the southwest one-quarter of section number thirty-three in township number one hundred and thirty-six, north of range number fifty-one west of the fifth principal meridian containing one hundred and sixty acres more or less according to the Government survey. And whereas the said certificate of purchase has been assigned to Lore Alford and John Gates and it appearing that the said Lore Alford and John C. Gates are the legal owners of said certificate of purchase etc.

"'And it appearing that the said Lore Alford and John C. Gates assignees are the legal owners of said certificate of purchase, and the time fixed by law for redeeming the land therein described having now expired and the same not having been redeemed as provided by law and the said Lore Alford and John C. Gates having demanded a deed for the tract of land mentioned in said certificate and which was the least quantity of the tract above described that would sell for the amount due thereon for taxes, costs and charges as above specified; and it appearing that the said lands were legally liable for taxation and had been duly assessed and properly charged on the tax book or duplicate for the year 1888, and that said lands had been legally advertised for sale for taxes were sold on the 4th day of November, 1889.

"'Now therefore, this indenture made this 12th day of February, 1892 between the State of North Dakota by J. K. Rickert, the treasurer of said county of the first part, and the said Lore Alford and John C. Gates of the second part, witnesseth, that the said party of the first part, for and in consideration of the premises and the sum of one dollar in hand paid hath granted, bargained, and sold, and by these presents doth grant, bargain, sell, and convey unto the said party of the second part, their heirs and assigns forever, the tract or parcel of land mentioned in said certificate and described as follows, to wit, the southwest one-quarter of section number thirty-three in township number one hundred and thirty-six, north
35 of range number fifty-one, west of the fifth P. M. containing one hundred and sixty acres more or less according to the Government survey, to have and to hold said mentioned tract or parcel of land, with the appurtenances thereunto belonging, to the said party of the second part, their heirs and assigns forever, in as full and ample manner as the said treasurer of said county is empowered by law to sell the same.

"'In testimony whereof, the said J. K. Rickert, treasurer of said

Richland county, has hereunto set his hand and seal on the day and year aforesaid.

"'J. K. RICKERT,
"'*County Treas.*

"'Attest: CHAS. G. BADE,
"'*Auditor of Richland Co., N. Dak.*

"'STATE OF NORTH DAKOTA, }
County of Richland. }

"'I, A. E. Sunderhauf, a notary public in and for said county, do hereby certify that on this 30th day of April, 1892, personally came before me J. A. Rickert, treasurer of Richland county, to me well known as the same person described in and who executed the foregoing deed, and acknowledged that he executed the same, as treasurer of Richland county, freely and voluntarily and for the uses and purposes therein contained.

"'[NOTARIAL SEAL.] A. E. SUNDERHAUF,
"'*Notary Public in and for Richland Co., N. Dak.*'

"That the other deeds were in the same form substantially, save that the description of the lands, the name of the purchaser, and the amounts paid were different in the different deeds.

"They admit that it does appear from the records in the office of the county treasurer of said county that such deeds and tax certificates were executed and delivered, and that the defendants' grantees under said deeds do claim and assert an interest thereunder to the lands described in said deeds and intend to record said deeds, and that the holders of said certificates do claim a lien on the
36 lands described therein for the amount of the purchase price, with interest, and claim an interest in and to said land by virtue of said tax sale.

"Further answering, these defendants severally say that they deny that the several county and township assessors for said county did not in the year 1888 make out and deliver to the county clerk of said county assessment-rolls prepared in substantially the form prescribed by the Compiled Laws of Dakota Territory for 1887.

"They deny that the said assessors failed to assess in said year the lands described in said bill, and deny that said lands or any of them were omitted from the township and county assessment-rolls for the said county for that year. They deny that the lands or the description of them do not appear on said roll.

"They deny that the board of county commissioners of said county of Richland did not hold a session of two days, commencing with the first Monday in July, 1888, as a board of equalization for the purpose of equalizing and correcting the assessment roll for said county.

"They deny that the levy for the general territorial tax for said year upon said lands exceeded the amount authorized by law, and aver that the rate of said territorial levy was fixed by the territorial board of equalization under and in pursuance of the powers given to said board by law.

"They admit that said lands so claimed by each of these defendants is of the value of over $2,000, and that the cost of redemption from the tax certificates held by each of these defendants would be more than $2,000 respectively.

"And these defendants submit that said bill ought to be dismissed with costs.

"Dated Jamestown, July 2nd, 1895.

"EDGAR W. CAMP,
"*Solicitor for Defendants.*"

37 Thereafter, a replication having been duly filed, the case was submitted to the circuit court of the United States for the district of North Dakota for final hearing and decision upon the following stipulation of counsel, to wit:

"*Stipulation.*

"It is hereby stipulated by and between the parties hereto and their counsel that, as between said parties and for the purposes of this trial, the following facts shall be deemed and taken to be true, and, together with the admissions in the pleadings, shall constitute the evidence upon which the above-entitled cause shall be tried and determined:

I.

"That the copies of the assessment-rolls for the townships of Helendale, Colfax, Barrie, Sheyenne, West End Freeman, Abercrombie, Grafton, West End Mellon, and Walcott, marked, respectively, Exhibits 'A,' 'B,' 'C,' 'D,' 'E,' 'F,' 'G,' 'H,' and 'I,' hereunto attached, are true copies of the respective assessment-rolls for said townships, in said county of Richland, for the year 1888, in so far as such assessment-rolls relate to the lands described in said exhibits.

II.

"That Exhibit 'J,' hereunto annexed, is a true and correct copy of the official minutes of the proceedings of the county commissioners of Richland county, North Dakota, from July 2 to July 10th, inclusive.

III.

"That the copy of the proceedings of the board of county commissioners for said county of Richland for September 3, 1888, hereunto attached and marked Exhibit 'K,' is a true and correct copy of the official minutes of said board at said meeting.

IV.

"That Exhibit 'L,' hereunto attached, is a true and correct copy of the form of tax-list of said county of Richland for the year 1888, and that the rate of the tax levy for 'territorial fund' for said year, as shown by said tax-list, was three and one-tenth (3.1)
38 mills, as shown on said exhibit.

"That Exhibit 'M,' hereunto annexed, is a true and cor-

rect copy of the proceedings of the territorial board of equalization had on August 13, 1888, so far as the same relate to Richland county.

"(Signed) F. M. DUDLEY,
"(Signed) J. B. McNAMEE,
"Attorney- for Plaintiffs.
"(Signed) EDGAR W. CAMP,
"Attorney for Defendants."

And the said United States circuit court of appeals for the eighth circuit further certifies to the Supreme Court of the United States the following questions or propositions of law arising upon the record in said case, concerning which it desires the instruction of that court for its proper decision of said cause:

Questions:

1. Had the United States circuit court for the district of North Dakota jurisdiction to hear and decide said case?

2. Were or were not the lands described in the bill of complaint subject to taxation under the laws of the Territory of Dakota in the year 1888 by reason of the facts stated in the bill of complaint respecting the condition of the title thereof?

3. Was it the purpose of chapter 99 of the Laws of Dakota for 1883 to exempt from taxation lands granted to aid in the construction of the Northern Pacific railroad by the act of July 2, 1864, which are outside of its right of way and are not shown to be used in its business as a common carrier?

4. If such was the purpose of the act was the act void in whole or in part as transgressing the limitations placed upon the power of the territorial legislature?

5. Conceding that the purpose of chapter 99 of the Laws of 1883 was to exempt, among other things, the land grant of the Northern Pacific Railroad Company, and that said law is valid, are the
39 payments of the percentage of the gross earnings for the year 1888, alleged in the bill to have been made, sufficient to entitle the complainant to the equitable relief sought?

6. Conceding the lands in controversy to have been subject to taxation for the year 1888, were the appellants, by reason of any of the alleged irregularities or defects in the mode of assessment, entitled to equitable relief without first offering to pay the taxes properly chargeable against said lands?

In witness whereof the undersigned judges holding the said United States circuit court of appeals for the eighth circuit have hereunto set their hands this 17th day of February, A. D. 1896, at St. Louis, Missouri, and ordered and directed that the foregoing certificate be filed in said circuit court of appeals, and by the clerk of said court duly forwarded to the Supreme Court of the United States.

HENRY C. CALDWELL,
WALTER H. SANBORN,
AMOS M. THAYER,
Circuit Judges.

40 United States Circuit Court of Appeals for the Eighth Circuit.

I, John D. Jordan, clerk of the United States circuit court of appeals for the eighth circuit, do hereby certify that the foregoing certificate in the case of Edwin H. McHenry and Frank G. Bigelow, receivers of the property of the Northern Pacific Railroad Company, appellants, *vs.* Lore Alford *et al.*, No. 748, December term, 1895, was duly filed and entered of record in my office by order of said court, and, as directed by said court, the said certificate is by me forwarded to the Supreme Court of the United States for its action thereon.

In testimony whereof I hereunto subscribe my name and affix the seal of the said United States circuit court of appeals for the eighth circuit, at the city of St. Louis, Missouri, this 17th day of February, A. D. 1896.

[Seal United States Circuit Court of Appeals, Eighth Circuit.]

JOHN D. JORDAN,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

[Endorsed:] Original. U. S. circuit court of appeals, eighth circuit, December term, 1895. No. 748. Edwin H. McHenry *et al.*, receivers, etc., appellants, *vs.* Lore Alford *et al.* Certificate of questions to the Supreme Court of the United States. Filed Feb. 17, 1896. John D. Jordan, clerk.

Endorsed on cover: Case No. 16,205. U. S. circuit court of appeals, eighth circuit. Term No., 139. Edwin H. McHenry & Frank G. Bigelow, as receivers of the property of the Northern Pacific Railroad Company, appellants, *vs.* Lore Alford, J. C. Gates, A. D. Stephens, Sumner R. Clarke, and D. C. Lake. Filed February 27, 1896.